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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/819,745	03/29/2001	Satoru Bushida	010381	2670

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EXAMINER

MENEFEE, JAMES A

ART UNIT

PAPER NUMBER

2828

DATE MAILED: 05/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/819,745

Applicant(s)

BUSHIDA ET AL.

Examiner

James A. Menefee

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Paul IP
PAUL IP
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

In response to the amendment filed 19 March 2003, claims 3-8 are amended. Claims 1-8 are pending.

Drawings

The corrected or substitute drawings were received on 19 March 2003. These drawings are acceptable.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 recites the limitations "said piezoelectric unit" and "said pulse motor unit" in the last two lines of the claim. There is insufficient antecedent basis for these limitations in the claim.

Claims 5-8 recites the limitations "said laser controller means" in lines 8, 10, 5, and 5 respectively. There is insufficient antecedent basis for these limitations in the claims. Applicant previously referred to the controller only as a "laser controller"

Claim Rejections - 35 USC § 102 and 35 USC § 103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (e) the invention was described in-
 - (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or
 - (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claims 1-2 are rejected under 35 U.S.C. 102(e) as being anticipated by Algots et al.
(previously cited US 6,192,064). Algots discloses the claimed invention as follows:

Regarding claims 1-2, Algots discloses a wavelength control device for a laser device including a movable holder for making an optical component 14C movable with respect to a laser optical axis, and a laser controller 24A for moving said optical component 14C with respect to the laser optical axis and changing an incident angle of laser light on a band narrowing optical component (the grating) to thereby control a center wavelength of the laser light to be a target wavelength, wherein said movable holder comprises a first drive mechanism 14B that is a piezoelectric element moving by a short distance, and a second drive mechanism 15 that is a pulse motor unit moving by a longer distance than the first drive mechanism.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent² may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-8 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Algots. Note that a rejection under either 102 or 103 may be used when the reference teaches all claim limitations except a means plus function limitation and the examiner is not certain whether the element disclosed in the reference is an equivalent to the claimed element and therefore anticipatory, or whether the prior art element is an obvious variant of the claimed element. See MPEP § § 2183- 2184.

Regarding claims 3-6, the structural limitations of these claims are completely disclosed by Algots as in the rejection of claims 1-2 above. However, there is not disclosed the “means plus function” portion of the claims, i.e. the function of the laser controller means. Algots is silent as to the manner in which the laser controller controls the first and second drive mechanisms. It is believed that this manner of controlling, the “function” part of the means plus function statement, may be inherent to the device of Algots. The device of Algots performs the same identical overall function as the device of the present invention, with the identical structure, and thus these functions in the means plus function will necessarily occur in order so that the overall functions will be the same. However, should the function not be inherent, then the claimed invention is deemed to be unpatentable as being obvious over Algots. This is due to the fact that the claimed invention appears to be an obvious variant of the device of Algots for the same reason as for the inherency, i.e. the identical structure yields the identical result.

Regarding claims 7-8, there is further disclosed in Algots a wavelength monitor 22 for monitoring the wavelength of the laser light.

Response to Arguments

Applicant's arguments filed 19 March 2003 have been considered but are not persuasive. Applicant made the following arguments:

1. Statement regarding claims 1-2 (last paragraph, p. 6 of Remarks).
2. Argument that claims 3-8 as amended are allowable (p. 7-8 of Remarks).

Regarding argument 1, there is nothing in this paragraph that suggests that the applicant has any argument against this rejection. Thus, this rejection is upheld.

Regarding argument 2, the argument is moot in light of the new rejection above.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James A. Menefee whose telephone number is (703) 605-4367. The examiner can normally be reached on M-F 8:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Ip can be reached on (703) 308-3098. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9318 for regular communications and (703) 872-9319 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

JM
April 23, 2003


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